

Ask the Probate Judge—What’s So Bad About Probate?

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Q: I read your last column about avoiding probate. I used your court and the do-it-yourself forms. You appointed me as personal representative the day after I filed my case. The process was cheap, quick, and straightforward. So I don’t get it--why are people so desperate to avoid probate? Anonymous

Many people hear the word “probate” and think “lengthy process,” “expensive,” “avoid at all costs.” These impressions do not apply to many cases in New Mexico, particularly informal proceedings.

My prior column stated that assets worth more than \$30,000 titled in the decedent’s sole name or as tenants in common require a court proceeding after death to pass them to the heirs or devisees.

Probate courts can accept only informal, uncontested cases; the probate court filing fee is \$30. Informal cases can also be filed in the district court. Formal cases must be filed in district court. The district court filing fee is \$122.

The New Mexico Supreme Court approved do-it-yourself probate court forms for use by the public without the assistance of an attorney, i.e., *pro se* applicants. Some attorneys use these forms as well. The do-it-yourself forms contain detailed instructions about how to complete them.

If an applicant is filing a case *pro se*, the applicant pays the court filing fee and fee to publish notice to creditors. If the applicant uses an attorney, he or she will also pay attorney’s fees.

With a dedicated personal representative and a cooperative family, a routine uncontested case can be opened and closed within three to twelve months. If the personal representative waives a fee for serving, an informal proceeding in the probate courts can cost less than \$100 using the do-it-yourself forms.

To start a case, a lawyer or *pro se* applicant files an application with the court, asking the court to appoint a personal representative to oversee the legal affairs of the decedent. If the case is opened informally, the judge does not hold a hearing before signing an order appointing the personal representative.

If the case is opened formally, notice will be given to heirs, devisees and other interested people, and the judge holds a hearing before issuing an order. The court clerk then issues Letters of Administration (if there is no will) or Letters Testamentary (if there is a will) to the personal representative. These Letters are evidence of the personal representative’s appointment and authority to act on behalf of the estate.

After receiving the Letters, the personal representative must:

- Arrange for decedent’s burial or cremation;
- Give notice to heirs and devisees;
- Handle decedent’s mail and notifying companies of decedent’s death;
- Cancel credit cards;
- Prepare an inventory and appraisal of the estate;

- File final federal and state income tax forms for the decedent and a federal estate tax return, if necessary;
- Notify and pay decedent's creditors;
- Pay family and personal property allowances, if applicable; and,
- Distribute decedent's assets according to the provisions of decedent's will, if any, or intestate laws, if no will exists.

If the estate is large enough, the personal representative may make a partial distribution of some estate assets to the beneficiaries. The personal representative should make partial distributions to the beneficiaries in equal shares and reserve sufficient funds to pay creditors.

New Mexico law does not allow a case to be closed until at least three months after filing. The most important thing for the personal representative to remember is: *do not close the estate until ALL tasks are completed, including preparing and recording new deeds to real property, if necessary.*

As you point out, probate in New Mexico can be a simple matter of paperwork. Although probate and appointment proceedings are not so simple when disputes arise about wills, heirs, undue influence, or other contested issues, in reality many estates are probated without spending excessive time or money. Clearing out a decedent's residence is often the most time-consuming task.